

Hon. _____

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

UNITED STATES OF AMERICA,
STATE OF WASHINGTON THROUGH
THE WASHINGTON DEPARTMENT
OF ECOLOGY, SUQUAMISH TRIBE,
AND TULALIP TRIBES,

Plaintiffs,

v.

JELD-WEN, INC., KIMBERLY CLARK
CORP., and WEYERHAEUSER NR
COMPANY,

Defendants.

Case No. 2:18-cv-00113

CIVIL COMPLAINT

COMPLAINT

- 1 -

UNITED STATES DEPARTMENT OF JUSTICE
Environment and Natural Resources Division
P.O. Box 7611, Washington, DC 20044
202-514-5270

1 Plaintiffs United States of America, by authority of the Attorney General, on
2 behalf of the National Oceanic and Atmospheric Administration of the Department
3 of Commerce (“NOAA”) and the Department of the Interior (“DOI”); the State of
4 Washington through the Washington Department of Ecology; the Tulalip Tribes;
5 and the Suquamish Tribe, allege as follows:

6 **I. GENERAL ALLEGATIONS**

7 1. This is a civil action under Section 311 of the Clean Water Act
8 (CWA), 33 U.S.C. § 1321; Section 1002(b) of the Oil Pollution Act (OPA), 33
9 U.S.C. § 2702(b); and the Model Toxics Control Act (MTCA), RCW 70.105D, for
10 damages for injury to, destruction of, or loss of natural resources resulting from the
11 release of hazardous substances and discharges of oil by Defendants into the Port
12 Gardner Bay Area in Everett, Washington.

13 **II. JURISDICTION AND VENUE**

14 2. This Court has jurisdiction over this case pursuant to Section 311(n)
15 of the CWA, 33 U.S.C. § 1321(n); Section 1017(b) of OPA, 33 U.S.C. § 2717(b);
16 and 28 U.S.C. §§ 1331, 1345 and 1367(a).

17 3. Venue is proper in this district pursuant to Section 1017(b) of OPA,
18 33 U.S.C. § 2717(b); and 28 U.S.C. § 1391(b) and (c).

19 **III. BACKGROUND**

20 4. For purposes of this complaint, the Port Gardner Bay Area is defined
21 as including the lower Snohomish River, Everett Waterfront, East Waterway, and a
22 portion of Possession Sound in and near Everett, Washington, as depicted in the
23 map attached as Appendix A.

24 5. There have been discharges of hazardous substances and oil within the
25 Port Gardner Bay Area over several decades at or from facilities located adjacent
26 to Port Gardner Bay, owned and/or operated by the Defendants.

1 6. The Port Gardner Bay Area is contaminated with oil and a variety of
2 hazardous substances, including polychlorinated biphenyls (“PCBs”),
3 organochlorine pesticides and related products, polycyclic aromatic hydrocarbons
4 (“PAHs”), metals (including lead, mercury, copper, chromium, and arsenic),
5 volatile and semi-volatile organic compounds, perchlorate, herbicides, organic
6 solvents, antifouling agents such as tributyltin and other butyltins, sulfide and
7 ammonia.

8 7. The lower Snohomish River, East Waterway, and a portion of
9 Possession Sound comprising the Port Gardner Bay Area are “navigable waters”
10 within the meaning of Section 1001(21) of OPA, 33 U.S.C. § 2701(21), and
11 Sections 311 and 502(7) of the CWA, 33 U.S.C. §§ 1321 and 1362(7).

12 IV. PLAINTIFFS

13 8. Pursuant to Section 1006 of OPA, 33 U.S.C. § 2706, Section 311(f)(5)
14 of the CWA, 33 U.S.C. § 1321(f)(5), and 40 C.F.R. § 300.600, the United States is
15 trustee for certain natural resources in the Port Gardner Bay Area.

16 9. Pursuant to Section 1006 of OPA, 33 U.S.C. § 2706, Section 311(f)(5)
17 of the CWA, 33 U.S.C. § 1321(f)(5), 40 C.F.R. § 300.605, RCW 43.21A, RCW
18 70.105D, and RCW 90.48, the State of Washington is trustee for certain natural
19 resources in the Port Gardner Bay Area.

20 10. Pursuant to Section 1006 of OPA, 33 U.S.C. § 2706, and 40 C.F.R. §
21 300.610, the Suquamish Tribe is trustee for certain natural resources in the Port
22 Gardner Bay Area.

23 11. Pursuant to Section 1006 of OPA, 33 U.S.C. § 2706, and 40 C.F.R. §
24 300.610, the Tulalip Tribes is trustee for certain natural resources in the Port
25 Gardner Bay Area.

V. DEFENDANTS

12. Each of the Defendants is a current owner or operator of, or formerly owned and operated, properties, identified in the list attached as Appendix B to this complaint, from which there have been discharges of hazardous substances and oil to the Port Gardner Bay Area.

13. At all times relevant to this complaint, each of the Defendants did business in this district.

14. Defendant Jeld-Wen, Inc., a Delaware corporation, is a former owner and operator of properties within the Port Gardner Bay Area, including property located at 300 W. Marine View Drive, Everett, Washington, from about 1986 to the end of 2013, which have been used for purposes including a wood door plant, sawmilling, casket manufacturing, machine shop processes, storage of above and below ground petroleum storage tanks, and a wood pole treating yard. There have been discharges of oil and PAHs, PCBs, furans, dioxins, and volatile and semi-volatile organic compounds from the properties owned and operated by Jeld-Wen, Inc.

15. Defendant Kimberly Clark Corp., a Delaware corporation, is the current owner and operator of properties within the Port Gardner Bay Area, including property located at 2600 Federal Ave, Everett, Washington, that have been used since the early 1900s for various purposes including sawmilling, a pulp and paper mill, and bulk petroleum storage operations. Kimberly Clark Corp. merged with Scott Paper Company, the successor to companies which conducted these operations, in 1995. Kimberly Clark Corp. operated the pulp and paper mill until 2012. There have been discharges of oil and metals, PAHs, PCBs, and volatile and semi-volatile organic compounds from the properties owned and operated by Kimberly Clark Corp.

1 16. Defendant Weyerhaeuser NR Company, a Washington corporation, is
2 a former owner and operator of properties within the Port Gardner Bay Area, from
3 the early 1900s to 1983, including the former Weyerhaeuser Mill A property,
4 located at 3500 Terminal Ave, Everett, Washington, which was used primarily for
5 purposes of a sawmill and pulp mill operations. There have been discharges of oil
6 and metals, PAHs, PCBs, phenols, and volatile and semi-volatile organic
7 compounds from the properties owned and operated by Weyerhaeuser NR
8 Company.

9 17. Investigations have detected oil and hazardous substances in soils,
10 groundwater or sediments on or in some or all of the properties owned or operated,
11 or formerly owned or operated, by each of the Defendants, identified in paragraphs
12 14-16 above.

13 **VI. FIRST CLAIM FOR RELIEF**

14 18. Plaintiffs reallege paragraphs 1 through 17.

15 19. Section 1002(a) of OPA, 33 U.S.C. § 2702(a), provides in pertinent
16 part, as follows:

17 Notwithstanding any other provision or rule of law, and
18 subject to the provisions of this Act, each responsible
19 party for a vessel or a facility from which oil is
20 discharged, or which poses the substantial threat of a
21 discharge of oil, into or upon the navigable waters or
22 adjoining shorelines or the exclusive economic zone is
23 liable for the removal costs and damages specified in
24 subsection (b) of this section that result from such
25 incident.

1 20. Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A), makes
2 responsible parties liable for:

3 Damages for injury to, destruction of, loss of, or loss of
4 use of, natural resources, including the reasonable costs
5 of assessing the damage, which shall be recoverable by a
6 United States trustee, a State trustee, an Indian Tribe
7 trustee, or a foreign trustee.
8

9 21. The properties owned or operated, or formerly owned or operated, by
10 the Defendants identified in paragraphs 14-16 were and are facilities within the
11 meaning of Sections 1001(9) and 1002 of OPA, 33 U.S.C. §§ 2701(9) and 2702.

12 22. Section 1001(32) of OPA, 33 U.S.C. § 2701(32), makes owners and
13 operators of onshore facilities responsible parties for damages resulting from the
14 discharge of oil from those facilities.

15 23. The discharge of oil from the identified facilities owned or operated,
16 or formerly owned or operated, by each of the Defendants into or upon the
17 navigable waters comprising the Port Gardner Bay Area and their adjoining
18 shorelines has resulted in injury to, destruction of, or loss of natural resources
19 within the trusteeship of one or more of the Plaintiffs.

20 24. Defendants are each liable to Plaintiffs for natural resource damages
21 resulting from discharges of oil pursuant to Section 1001 of OPA, 33 U.S.C. §
22 2701.

23 **VII. SECOND CLAIM FOR RELIEF**

24 25. Plaintiffs reallege paragraphs 1 through 24.

25 26. Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), provides in
26 pertinent part, as follows:
27

1 The discharge of oil or hazardous substances (i) into or
2 upon the navigable waters of the United States, adjoining
3 shorelines, or into or upon the waters of the contiguous
4 zone . . . or which may affect natural resources belonging
5 to, appertaining to, or under the exclusive management
6 authority of the United States . . . in such quantities as
7 may be harmful as determined by the President under
8 paragraph (4) of this subsection, is prohibited

9
10 27. Section 311(f)(2) of the CWA, 33 U.S.C. § 1321(f)(2), provides in
11 pertinent part, as follows:

12
13 Except where an owner or operator of an onshore facility
14 can prove that a discharge was caused solely by (A) an
15 act of God, (B) an act of war, (C) negligence on the part
16 of the United State Government, or (D) an act or
17 omission of a third party without regard to whether an
18 such act or omission was or was not negligent, or any
19 combination of the foregoing clauses, such owner or
20 operator of any such facility from which oil or a
21 hazardous substance is discharged in violation of
22 subsection (b)(3) of this section shall be liable to the
23 United States Government for the actual costs incurred
24 under subsection (c) of this section for the removal of
25 such oil or substance by the United States Government
26

1 28. Section 311(f)(4) of the CWA, 33 U.S.C. § 1321(f)(4), provides in
2 pertinent part, as follows:

3 The costs of removal of oil or a hazardous substance for
4 which the owner or operator of a vessel or onshore or
5 offshore facility is liable under subsection (f) of this
6 section shall include any costs or expenses incurred by
7 the Federal Government or any State government in the
8 restoration or replacement of natural resources damaged
9 or destroyed as a result of a discharge of oil or a
10 hazardous substance in violation of subsection (b) of this
11 section.

12 29. The properties identified in paragraphs 14-16 owned or operated, or
13 formerly owned or operated, by the Defendants are onshore facilities within the
14 meaning of Section 311(f)(2) of the CWA, 33 U.S.C. § 1321(f)(2).

15 30. There have been discharges of hazardous substances in harmful
16 quantities into or upon the navigable waters comprising the Port Gardner Bay Area
17 and their adjoining shorelines from the identified facilities owned or operated, or
18 formerly owned or operated, by the Defendants.

19 31. Discharges of hazardous substances from the facilities owned or
20 operated, or formerly owned or operated, by the Defendants have damaged or
21 destroyed natural resources belonging to, appertaining to, or under the exclusive
22 management authority of the United States.

23 32. Defendants are each liable to the United States and the State of
24 Washington for natural resource damages resulting from discharges of hazardous
25 substances into the Port Gardner Bay Area pursuant to Section 311(f) of the CWA,
26 33 U.S.C. § 1321(f).

VIII. THIRD CLAIM FOR RELIEF

33. Plaintiffs reallege paragraphs 1 through 32.

34. MTCA, RCW 70.105D.040, provides in pertinent part as follows:

(1) Except as provided in subsection (3) of this section,
the following persons are liable with respect to a facility:

(a) The owner or operator of the facility;

(b) Any person who owned or operated the facility at the
time of disposal or release of the hazardous substances;

(c) Any person who owned or possessed a hazardous
substance and who by contract, agreement, or otherwise
arranged for disposal or treatment of the hazardous
substance at the facility, or arranged with a transporter
for transport for disposal or treatment of the hazardous
substances at the facility, or otherwise generated
hazardous wastes disposed of or treated at the facility;

(d) Any person (i) who accepts or accepted any
hazardous substance for transport to a disposal, treatment
or other facility selected by such person, from which
there is a release or a threatened release for which
remedial action is required, unless such facility, at the
time of disposal or treatment, could legally receive such
substance; or (ii) who accepts a hazardous substance for
transport to such a facility and has reasonable grounds to

1 believe that such facility is not operated in accordance
2 with RCW 70.105; and

3
4 (e) Any person who both sells a hazardous substance and
5 is responsible for written instructions for its use if (i) the
6 substance is used according to the instructions and (ii) the
7 use constitutes a release for which remedial action is
8 required at the facility.

9
10 (2) Each person who is liable under this section is strictly
11 liable, jointly and severally, for . . . all natural resource
12 damages resulting from the releases or threatened
13 releases of hazardous substances.

14
15 35. Materials disposed of and released in the Port Gardner Bay Area from
16 the properties identified in paragraphs 14-16 owned or operated, or formerly
17 owned or operated, by the Defendants include hazardous substances within the
18 meaning of RCW 70.105D.020(13).

19 36. The identified properties owned or operated, or formerly owned or
20 operated, by the Defendants are facilities within the meaning of RCW
21 70.105D.020(8).

22 37. The Port Gardner Bay Area is a facility within the meaning of RCW
23 70.105D.020(8).

24 38. Releases or threatened releases of hazardous substances have occurred
25 in the Port Gardner Bay Area within the meaning of RCW 70.105D.020 and
26 70.105D.040.

1 39. The natural resources that have been and continue to be injured,
2 destroyed, or lost by the release of hazardous substances from the identified
3 facilities owned or operated, or formerly owned or operated, by the Defendants
4 include fish, shellfish, invertebrates, birds, marine sediments, and other such
5 natural resources.

6 40. The State of Washington has incurred and continues to incur response
7 costs related to the assessment of injury to natural resources caused by the releases
8 of hazardous substances from the identified facilities owned or operated, or
9 formerly owned or operated, by the Defendants.

10 41. Pursuant to RCW 70.105D.040(2), Defendants are jointly and
11 severally liable to the State of Washington for all damages to natural resources in
12 the Port Gardner Bay Area, resulting from the release of hazardous substances at or
13 from the Defendants' identified facilities.

14 **IX. REQUEST FOR RELIEF**

15 WHEREFORE, Plaintiffs request that this Court enter judgment against
16 Defendants:

17 (1) For damages for injury to natural resources resulting from the
18 discharges of oil or releases of hazardous substances in the Port Gardner Bay Area,
19 including the cost of assessing such damages; and
20

21 (2) Awarding Plaintiffs such other and further relief as this Court may
22 deem appropriate.

23 Dated: January 25, 2018

24 UNITED STATES OF AMERICA

25 JEFFREY H. WOOD

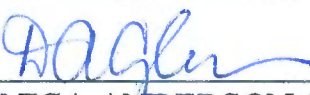
26 Acting Assistant Attorney General

27 Environment & Natural Resources Division

28 COMPLAINT

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27
28 COMPLAINT

SUQUAMISH TRIBE

s/ Melody Allen

MELODY ALLEN

Suquamish Tribe

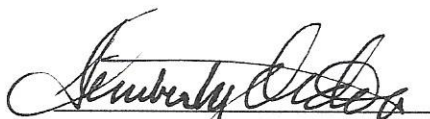
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THE TULALIP TRIBES

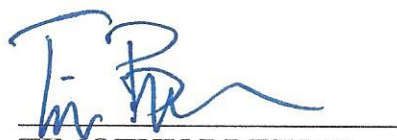


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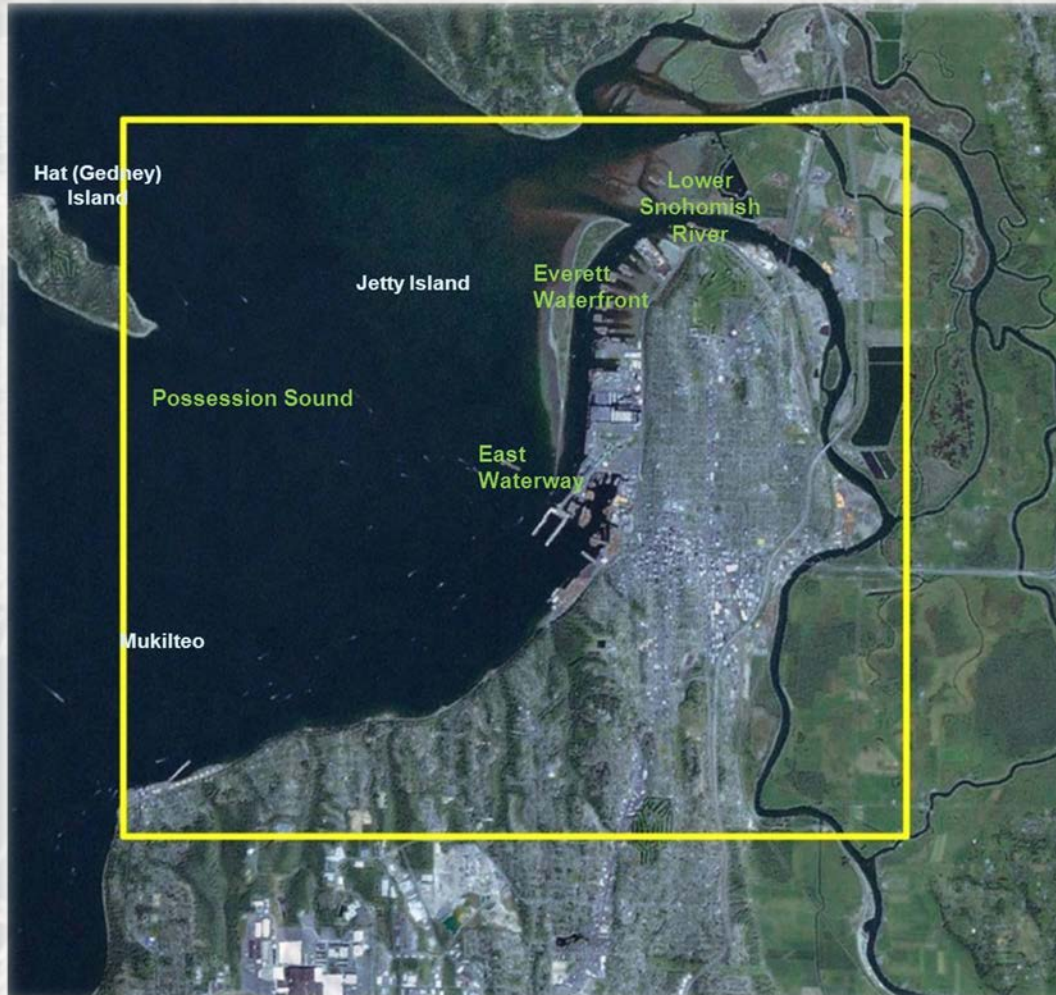
TIMOTHY BREWER

Tulalip Tribes Office of the Reservation Attorney

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Tulalip, WA 98271

Assessment Area



APPENDIX B

**Tax Parcels owned and/or operated by Settling Defendants within the Port
Gardner Bay Area (Listed by Tax Parcel Number)**

Jeld-Wen, Inc.

29050700100400 (300 W. Marine View Drive, Everett WA 98201-1030)

29050700101200

Kimberly Clark Corp.

29051900300100

29051900300200

29051900201500

29051900201300

29051900201100

29051900201000

29051900200900

00597761803901

00597761803000

00597761801000

00597761800600

00437461700200

29051900201900

00516048600000

00516055600000

00437455601300

00437455701302

00437455701301

00437455701600

00437455800500

29052100201000

00480100200800

00563245900000

29052100200900

29052100300800

00480100100100

29050700100100

29050800200800

29050800200900

29050700100700

00439700000100

29050600100100

29051800201500

Weyerhaeuser NR Company

29053000201800 (3500 Terminal Ave, Everett, WA 98201)

29053000203400